

Police Juvenile Justice Policy and Protocols

February 2006



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Abbreviations

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| CBC | Community Based Corrections |
| CRC | Conventions on the Rights of the Child (1989) |
| JCA | Juvenile Courts Act (1991) |
| JCO | Juvenile Court Officer |
| OIC | Officer in Charge |
| PHQ | Police Headquarters |
| PJO | Police Juvenile Officer |
| PJP | Police Juvenile Prosecutor |
| PSC | Police Station Commander |
| RPNGC | Royal Papua New Guinea Constabulary |
| Shift OIC | Shift Officer in Charge |
| UNICEF | United Nations Children's Fund |
| VJCO | Volunteer Juvenile Court Officer |

Preface

Papua New Guinea (PNG) became a signatory to the *United Nations Convention on the Rights of the Child* (CRC) in 1993. The CRC aims to protect the special needs and 'rights' of children in society including those that come in conflict with the law.

Article 40.3 of the CRC declares that "All Nations shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed the penal law..." PNG. Parliament subsequently passed the *Juvenile Courts Act, 1991 (JCA)* which was proclaimed by gazettal on 30th, January 2003. The JCA establishes a separate justice system for juvenile offenders with separate Juvenile Courts. These courts as well as the whole justice system will use contemporary international juvenile justice practices and (Melanesian) restorative justice principles in managing juveniles who come into conflict with the law.

Juveniles under the JCA are those aged between 7 and 18 years. This group of young men and women are going through a period of transition in developing from childhood to adulthood. Their judgement and decision-making capacity is not fully developed. As they try to find their identity and place in society many will exhibit anti-social and even criminal behaviour. They are easy to be abused and influenced for good or bad. *The United Nations Conventions on the Rights of the Children* acknowledges this special situation and needs of the juveniles and established the conventions to protect their rights and safeguard their best interests.

Police practices and procedures must be realigned with the JCA to enable the constabulary to meet its duties and obligations in the new juvenile justice system. As gate-keeper to the criminal justice system, the constabulary has a major role to play in ensuring the success of these reforms. Success will be measured by the reduced number of juveniles entering the formal justice system as more and more trivial and minor offenders are diverted to the informal processes. Police reforms will be driven and guided by this '*Police Principles & Guidelines and Diversion Program*' for Juvenile Justice (protocol).

My sincere appreciation goes to Mr. Kepas Paon, Deputy Secretary (DJAG) the Chairman of the Technical Working Group, Mr. Bruce Grant of UNICEF PNG, Adviser to the working group and ACP. Jim Wan, QPM, the Chairman of the police sub-committee and all those involved in the development of this *Juvenile Justice Policy and Protocols* in one way or another.

Lastly I am committed to ensuring the successful implementation and mainstreaming of this 'Protocol' into standard police systems, practices and procedures for the best interests of our children and the wider community.



Port Moresby
20 February 2006

A handwritten signature in dark ink, appearing to read 'Sam E. Inguba', with a horizontal line underneath.

SAM. E. INGUBA, CBE, QPM, DPS
Commissioner for Police.

Royal Papua New Guinea Constabulary

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| Circular No: 04 / 2004 | National Police Headquarters PO Box 85 Port Moresby National Capital District |
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SUBJECT: POLICE JUVENILE JUSTICE POLICY AND PROTOCOLS

1. PURPOSE

This Policy defines the duties and obligations of the Royal Papua New Guinea Constabulary under the *Juvenile Courts Act 1991*, the *National Law and Justice Policy*, and the various United Nations *Conventions on the Rights of the Child* (CRC) and Juvenile Justice. It also provides directions for reforms necessary for the constabulary to meet those duties and obligations. This Circular includes the *Principles and Guidelines and Diversion Program* (the Protocols hereafter).

2. BACKGROUND

The [*United Nations Standard Minimum Rules for the Administration of Juvenile Justice*] (The Beijing Rules) declares under General Principles 1.4. that “*Juvenile Justice shall be conceived as an integral part of the national development process of each country*”.

In keeping with the UN Conventions, Section 1 of the *Juvenile Courts Act, 1991* declares under *Compliance With Constitutional Requirements* that, “*For The Purpose Of Section 29 of the Organic Law on Provincial Governments, it is declared that this law relates to a matter of national interest*”. The *Juvenile Courts Act, 1991* sole purpose is to administer juvenile justice which is a matter of national interest and a national development issue.

The CRC has therefore declared that all societies have a duty and obligation to give all children every opportunity to develop into balanced and productive adults and that the children have the right to such opportunities; including those that come into conflict with the law.

- Juvenile crime in PNG is a complex phenomenon that has been studied and debated over the years. Youth crimes range from petty stealing, pick-pocketing and marijuana use to serious and violent crimes like armed robbery, murder, rape etc.
- There are a number of socio-economic factors that have contributed to this national youth problem. PNG has been and will continue to experience a period of rapid social and economic change for many years to come. Within this context there is inadequate employment opportunities, difficulties in accessing education, cultural changes etc.
- In urban areas and now increasingly in the rural areas many young people feel detached from the village traditional life style which used to give them some identity and purpose in life. At the same time they are excluded from the modern economy as a result of urbanization.
- History shows that societies that undergo rapid social and economic change always experience increases in juvenile crime rates because the challenges of such social and economic upheavals are felt more acutely by teenagers.
- Added to this is the fact that adolescence is a time of dramatic change for young people. This is the **period of transition** from **childhood to adulthood**. They have not yet acquired the same judgement and decision - making capacity of adults. During this time of transition they are very vulnerable. They can be easily manipulated and influenced adversely, abused and traumatized by others especially adults and peer groups.

- They will experiment, challenge authority and elders, take unnecessary risks and in some cases become involved in petty crimes. This is all part of a normal process of growing-up, a struggle to define their identity and sense of belonging in the community and toward maturity that **all teenagers go through**.
- Most teenagers mature out of such anti-social behaviours into responsible citizens as they grow older. Clearly juveniles have special rights and needs that must be protected, especially for those who come into conflict or contact with the law.

Crime figures over the years indicate that of all cases processed through the 'formal criminal justice system' 20 - 30% are indictable crimes while 70 - 80% are non-indictable and minor offences. A significant proportion of those in prison, convicted or on remand are therefore minor offenders. Many are incarcerated only because they cannot afford the fine or bail and many are held on remand well over the statutory period. This has caused frustrations resulting in constant mass-break-outs. The Juvenile population falls into the same pattern.

3. NATIONAL LAWS AND INTERNATIONAL PROTOCOLS

3.1 United Nations (UN) Convention on the Rights of the Child (CRC)

The UN recognizing the special needs and rights of the child adopted the *Convention on the Rights of the Child* (CRC) in 1989. PNG ratified the CRC in 1993. This means that PNG has made a promise to its people and the rest of the world to fully implement the CRC for every child, including children in conflict with the law.

The CRC comprises 54 Articles or Rules. Article 40(3) declares that "*All countries shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognized as having infringed the penal law...*"

3.2 National Law & Justice Policy

In 1999 the *National Law & Justice Policy and Plan of Action-Toward Restorative Justice* identified juvenile justice as a priority issue. That 'Policy' defined the Law and Justice Sector and plays a vital role in coordination. Juvenile Justice in particular requires an integrated approach by the line agencies and stakeholder partners.

3.3 Juvenile Courts Act (JCA), 1991 Gazetted

In January 2003 the *Juvenile Courts Act, 1991* (JCA) was officially gazetted. The Act sets up a **separate justice system for juveniles** in the light of the special needs and rights of the child. The JCA establishes the Juvenile Courts and the Juvenile Court Services which provides Juvenile Court Officers who will advocate for the rights of the Juvenile at Police Stations and in Courts. It also sets out the duties and obligations of Police and the other agencies.

4. REFORM PRINCIPLES

The [*National Law & Justice Policy*], the *Juvenile Courts Act* and the UN CRC requires that the PNG Criminal Justice system be reformed to ensure that the specific rights and needs of the juvenile population that came in conflict with the Law are protected throughout the criminal justice process. The process which starts with the Police will be built on the following fundamental principles and concepts;

4.1 Best interest of the child (juvenile) shall be a primary consideration

In its Preamble the CRC states "*the child by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection....*".

Article 3.1 of the CRC declares "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*"

In keeping with this principle all police procedures and practices will be re-aligned and performed with the present and future well-being and best interests of the child as a primary consideration.

The aim is to prevent and minimize physical and psychological trauma and to help the young person to develop into a productive adult. Hostile and abusive approaches can no longer be tolerated. Arrests and detention in cells must now only be used in extreme or special circumstances and priority will be given to juvenile cases to be cleared in the shortest possible time.

To protect the future interests of the child strict confidentiality of their identity and records will be maintained. Release of any information as to the identity of a juvenile offender to a third party is prohibited.

All necessary steps will therefore be taken at every stage of the investigation, arrest and prosecution process to prevent and minimize physical and mental trauma. Every effort will be made to correct, rehabilitate and reintegrate the juvenile back into the community as early as possible.

4.2 Restorative justice

Restorative justice is the theme of the *National Law & Justice Policy*. With this theme the underlying intents of the Policy is to redirect and reform the law and justice sector towards focusing on being proactive and preventative. It seeks to address the root causes of the problem as well as the symptom. Restorative justice principles will therefore be an integral part of Police practices in juvenile justice.

Restorative Justice is not to be perceived as a different legal system to deal with juvenile law-breakers. It is rather the use of positive aspects of existing (Melanesian) traditional concepts of justice and resolving conflict to complement and support the formal contemporary national and international practices on juvenile justice. Through the Diversion Program a large portion of juvenile cases which are trivial and minor offences will be resolved without the use of a formal arrest.

Restorative justice:-

- seeks to balance the needs of the three principle clients of the justice system-victim, offender and the community which includes their relatives;
- holds the offender directly accountable to the individual victim and particular community affected by the offence;
- requires the offender to take responsibility to make things whole again to the degree that it is possible;
- provides the victim access to the justice system and correctional process, which allows them to assist in shaping offender obligations;
- encourages community involvement in supporting the victim, holding the offender accountable and providing opportunities for the offender to reintegrate into the community.

In a nutshell, restorative justice aims to restore conditions and relationships between all parties concerned to the state they were at prior to the conflict or offence.

4.3 Diversion

Diversion is made possible under Section 3 of the *Arrest Act* that states that on reasonable grounds “...a Policeman may without warrant arrest...” The use of the word **may** gives individual members discretionary powers of arrest. The Commissioner through this policy has set guidelines on the use of the discretionary power of arrest, with regards to juvenile offenders to ensure their best interests are protected.

Formal arrest and detention in police cells are very traumatic experiences and must be limited to crimes that carry life imprisonment or the death penalty. Detention of juvenile offenders in the police cells will only be used for the following reasons:-

- To prevent escape where there is strong evidence that the juvenile may try to escape.
- To protect them from their own actions or actions of others.
- To protect others from the actions of the juvenile.

In all other cases the first course of action will be to divert the offenders/suspects' case to be dealt with through one or a combination of the eight options in the Protocol. Strict confidence on information as to the identity of the juvenile will be maintained at all times.

Given their stage of development and vulnerability this is not a soft option but the best for the child and everyone concerned.

5. REFORM STRATEGIES

The *Juvenile Courts Act* and the CRC require the following reforms that are now in effect:-

5.1 Establish a juvenile protocol on 'Principles & Guidelines and Diversion Program'

As an attachment to this policy on juvenile justice the attached *Police Principles and Guidelines and Diversion Program (Protocol)* lists eight options for diverting and managing trivial and minor offences. It sets out the specific **rights** of juveniles, the relevant conventions, policies and laws and the course of actions to be taken.

5.2 Shift supervisors appointed as Police Juvenile Officers (PJO)

To ensure this Protocol is properly implemented the Police Station Commander (PSC) has overall responsibility. His delegate for operational purposes will be the OIC Prosecutions who will oversight the officer or NCO-in-charge of each General Duty Shifts often called the Shift Supervisor. The Shift Supervisors will have the responsibility of screening all matters involving juveniles to decide whether to arrest or divert. The final decision to arrest or divert rests with the General Duties Shift Supervisor (For indictable crimes arrest will be the option but all statutory requirements and protocols applying to arrested juveniles will be observed e.g. detention and processing to be done in a separate room from adults with Juvenile Court officers (JCO) or parents to be present where possible etc.)

The added role of the shift supervisor is to:-

- act as delegate for the PSC on all juvenile matters to ensure all members comply with Protocols;
- ensure that all juvenile cases and matters are brought to his/her attention;
- screen all cases involving juveniles and decide whether the attending member is to arrest or 'divert' the matter to one or combination of the eight options. If diverted ensure that the attending member completes the necessary files and hands over to the JCO for his/her further attention;
- contact a JCO, or parent/guardian (of the juvenile) to be present when a juvenile is to be dealt with;
- ascertain the identity and currency of the JCO's, appointment through the *Police Gazette* before approving his/her contact with the juvenile in police custody;
- ensure the attending member follows through with the case to a proper conclusion;
- oversee activities in the juvenile reception room (JRR) including O/B entries and data management;
- ensure proper upkeep, resourcing and security of the JRR;
- report to OIC Prosecutions on all juvenile matters;
- report in writing to OIC Prosecutions on any juveniles detained overnight in custody.

5.3 Duties of all section heads

Once the shift supervisor has made a decision that a matter will be dealt with by way of a formal arrest, the formal interviews and processing of the juvenile will take place in the juvenile reception room that are specifically designed for this purpose. All station section heads - CID, traffic, mobile, task forces etc. will ensure their members comply.

5.4 Provincial Coordinator Community Policing (PCCP).

PCCP has the following tasks:-

- i. oversee the activities of Shift Supervisors concerning juvenile offenders.
- ii. Include juvenile data in his monthly briefs to Director Community Policing.
- iii. Ensure all juvenile matters are referred to the correct court.

5.5 Appoint Police Juvenile Prosecutors (PJP)

The JCA requires dedicated police prosecutors to ensure proper attention is given to juvenile cases as previously under the Children's Courts that are now abolished. Children's Court Prosecutors are now re-designated 'Police Juvenile Prosecutors'. They will undergo specialized training for this purpose. Their duties include reporting to the court on any juveniles detained overnight in police custody.

5.6 Juvenile reception (interview/mediation) room

Separation of processing and detention from adults is a key outcome. It reduces trauma, removes the risk of abuse/assault or adverse influence by adults and is conducive to the rehabilitative process. A separate dedicated child-friendly but escape proof room will be constructed or set aside for this sole purpose. The room will be separate and apart from adult facilities. There will be separate rooms and facilities for female juveniles. The room will be used for:-

- informal and formal interview of suspects;
- formal arrest processing;
- statement taking of juvenile victims/ complainants and witnesses/informants;
- initial mediation;
- waiting for arrival of parents/JCO or transfer, etc.

In stations where no 'dedicated' interview room is available every effort will be made to process, hold or detain juveniles in separate rooms from adults and female juveniles kept separate from males.

5.7 Separate occurrence book (O/B) in the juvenile reception room

Juvenile justice is 'a matter of national interest' and the government and other stakeholders are entitled to know how many juveniles are processed each year and other relevant information. This separate O/B will capture this information and make it easily extractable for the Commissioner and the other stakeholder partners.

5.8 Training

Specialized courses will be developed to educate and skill all members in the proper and effective management of juveniles who:-

- come in conflict with the law as suspect offenders;
- are victims of crime/abuse including neglect;
- are witnesses or informants.

All serving members will undergo retraining on this subject.

5.9 Amend training and operational procedures

Police procedures and standing orders, are to be amended accordingly.

6. JUVENILE COURT OFFICERS

The JCA (Sections 8 and 9) establishes a Juvenile Court Service with a Director as head and staffed by trained juvenile courts officers. These JCOs will act upon the delegated powers of the Director.

In areas where there is no Juvenile Court Office, the Office of Community Based Corrections (CBC) will train community leaders to 'act' as JCOs and inform the local PSC accordingly.

The JCOs have the following powers that relate to police duties and all members will ensure they are fully conversant with these powers. This is to facilitate the smooth flow of the juvenile justice process at respective localities.

The JCO will also have access to the Police Station Commander (PSC) or the PPC as the case may be to report any concerns he/she may have regarding any member's actions in relation to the processing of juveniles and related matters under the *Juvenile Courts Act, 1991*.

The PSC/PPC will take appropriate and prompt action to address such concerns.

7. POWERS OF JUVENILE COURT OFFICERS

1. These listed powers of the JCO are enforceable

The JCA, section 13 empowers Juvenile Court Officer to:-

- a. enter any police station, lock-up or any other place of detention, for the purpose of interviewing a juvenile or a ward; and
 - b. be present at the interrogation of a juvenile or a ward; and
 - c. advise a juvenile or a ward of his legal rights and of his right to refuse to answer questions; and
 - d. question an arresting officer in respect of a juvenile or a ward who is arrested or who is charged with, or in connection with, an offence; and
 - e. attend in any court and be heard in connection with any charge against a juvenile or a ward to whom he is assigned; and
 - f. make submission in respect of a sentence to be imposed on a juvenile or ward; and
 - g. counsel or advise a juvenile or a ward.
2. A Juvenile Court Officer may commence, appear in or continue any proceedings or action on behalf of any other Juvenile Court Officer.
 3. A person who hinders or obstructs a Juvenile Court Officer in the exercise of his powers under this Act is guilty of an offence. Penalty: A fine of not exceeding K300.00 or imprisonment for a term not exceeding three months, or both.

Penalty: A fine of not exceeding K300.00 or imprisonment for a term not exceeding three months, or both.

8. SECURITY

The security and safety of the detainees as well as the juvenile and government/police property is not to be compromised in any way. To ensure this happens the proper identify of the JCO will first be established prior to permission being granted for entry into the police station/cell or contact with the juvenile. All such visits will be recorded in the Juvenile Occurrence Book.

8.1 Police gazettal of Juvenile Court Officers

Information on the names and details of appointed JCOs will be supplied by the Director Community Based Correction (CBC) of the Department of Justice & Attorney General to the Commissioner of Police who will have them printed in the *Police Gazette*.

To prevent unnecessary risks the JCOs must:-

- i. report to the Shift Supervisor or in his absence the most senior NCO or officer on duty at the Duty Office at the time and produce an identification card containing:-
 - a recent passport size 'face' photo of himself/herself;

- registration Number and *Police Gazette* Number.
- After the Shift Supervisor is satisfied as to the validity (identity, currency and jurisdiction) of the JCOs appointment,
- Proceed as necessary guided by the *Principles and Guidelines and Diversion Program* and the Act.

In places where there are no registered JCOs the PSC will liaise with ‘known’ and respected community leaders like church pastors to act as JCOs.

The PSC is to maintain an up-to-date list of appointed and acting JCOs in his command, their address and contact number (where available) and issue a station instruction authorizing their involvement with the Shift Supervisors on juvenile matters.

A copy of the station instruction is then to be transmitted to the OIC Juvenile Protocol Monitoring Unit office of Director Prosecutions at Police Headquarters who will make it available to the Director CSC.

9. EXPECTED OUTCOMES

Immediate and long term outcomes are anticipated from the effective implementation of this policy.

9.1 For police

This Policy will:-

- enable the constabulary to meet its duties and obligations under the *Juvenile Courts Act 1991*, the [*National Law & Justice Policy*], the United Nations *Convention on the Rights of the Child* and other protocols on juvenile justice;
- provide guidance on the use of police discretionary powers in relation to juvenile offenders in cooperation with the other key agencies in the sector and other stakeholders;
- provide the reference point for the future development of related policies, procedures and programs on juvenile justice.

9.2 For Juveniles

This Policy will:-

- reduce the number of juveniles re-offending;
- reduce the number of arrests per year by at least 70%;
- reduce the numbers in custody per year by at least 70%;
- minimize length of time spent in custody;
- separate them from adults.

9.3 For government and society

This Policy will:-

- assist more juvenile offenders to become responsible citizens;
- reduce costs to government in maintaining them in custody;
- free up resources to be diverted to more serious cases;
- free up resources to enable faster processing of serious crimes.

10. PROGRAM MANAGEMENT

This Policy and Protocol is the responsibility of Director Community Policing National Police Headquarter to ensure its full implementation, and to monitor and review as necessary from time to time. This will be done through the Juvenile Protocol Monitoring Unit.

10.1 Juvenile Protocol Monitoring Unit (JPMU)

Director Community Policing will deploy a small unit of two officers to monitor the implementation of this policy. (The Unit will be reviewed in two to three years time.) This Unit will be responsible for:-

- monitoring the implementation of the Protocol;
- coordinating training on the Protocol and juvenile justice;
- maintaining up-to-date data on juvenile cases nationally;
- maintaining up-to-date list of Juvenile Court Officer's details, contact numbers and addresses;
- in liaison with the Director Juvenile Court Services, publish names of Appointed Juvenile Court officers in the *Police Gazette* through the Office of the Police Commissioner, and distribute;
- keep local PSCs informed of progress;
- keep Director Community Policing informed of progress;
- ensuring timely stock and supply of specific resources and materials is provided to the stations and reception rooms.

I commit the constabulary to ensuring the successful mainstreaming of this policy into standard police practices and procedures. All officers and members will therefore make themselves fully conversant with this Policy, the Principles and *Guidelines and Diversion Program* and the Act and ensure their full and proper implementation.



Sam E. Inguba, CBE, QPM, DPS.
Commissioner of Police.

Date: 28th February 2005

Chapter 1

Extracts from the Juvenile Courts Act

Part 1 – Preliminary

Section 2 - Interpretation

Juvenile Courts Act

The *Juvenile Courts Act* (JCA) was passed by Parliament in 1991 and fully gazetted on 30 January 2003. The JCA replaces those sections of the *Child Welfare Act*, covering juvenile offenders and Children's Courts. The JCA describes in detail the procedures for arrest and detention of a juvenile.

Juvenile

A juvenile is a person aged not less than seven years and less than 18 years. Previously a juvenile was defined as being under the age of 16 years.

Juvenile Courts

Juvenile Courts, replace the Children's Courts, and are established for specific geographical areas. Juvenile Courts have been established in Port Moresby, followed by Lae and Rabaul, Mt Hagen, Kundiawa, Goroka and Wewak.

A Juvenile Court has jurisdiction to hear and determine summarily all offences otherwise triable in a District or a Local Court.

A Juvenile Court has jurisdiction to hear and determine all indictable offences, other than homicide, rape or an offence punishable by death or imprisonment for life.

Where a juvenile is charged with homicide, rape or other offence punishable by death or imprisonment for life, the **committal proceedings** will be dealt with by a Juvenile Court. The trial will be heard and determined by the **National Court**.

Courts of Summary Jurisdiction

A Court of Summary Jurisdiction can sit as a Juvenile Court where no Juvenile Court has been established in an area or it is impracticable for a juvenile to be brought before a Juvenile Court.

Juvenile Courts Service

The Juvenile Courts Service has an overall responsibility for the implementation of the JCA. It is a part of the **Community Based Corrections (CBC)** within the **Department of Justice & Attorney General**. It is staffed by the Director Juvenile Courts Service, Coordinator Juvenile Courts, and Juvenile Court Officers. CBC was previously called the probation and parole service.

Juvenile Court Officers (JCO)

Juvenile Court Officers (JCO) have specific responsibilities in relation to the arrest and charging of a juvenile.

Police Juvenile Officers (PJO)

The Police Juvenile Officer (PJO) is a station shift supervisor (ie. the shift OIC), who is delegated the responsibility of being a Police Juvenile Officer (PJO).

The PJO's role is to:-

- determine whether a case (based on certain criteria) should be diverted or an arrest is to be made;
- maintain statistics;
- maintain the Juvenile Occurrence Book; and
- make reports to the courts regarding a case as necessary.

Shift Officer in Charge/Shift Supervisor

Different regions use different terms to describe this position. These officers are the supervisors/OIC in charge of a particular general duty shift. They are designated PJOs.

Ward

Ward means a juvenile:-

- committed under this Act under the Director; or
- made a ward of the Director in accordance with an order of a court.

Section 3 - Determination of age



What the JCA says

When the police arrest or detain a person and there is a doubt or dispute as to his or her age, age shall be determined by the **Juvenile Court Officer (JCO)**.

When the matter comes before the Court and there is still doubt or dispute as to the age of the defendant, age shall be determined by the **Court**.



Principle 1

Where there is doubt or dispute between the Juvenile Court Officer (JCO) and the Arresting Officer as to the age of a juvenile, the Arresting Officer will accept the decision of the Juvenile Court Officer (JCO).



Principle 2

Where there is dispute or doubt about the age of a young person, and there is no Juvenile Court Officer available, the Arresting Officer will give the benefit of the doubt and determine that the young person is a juvenile.



Principle 3

Assumptions based on physical characteristics, such as hair growth and physical development may in some cases clearly determine whether the person is well below or well above the age of 18 years. Such assumptions will not be used to determine whether a juvenile is just below or just above the age of 18 years.



Principle 4

Where the Arresting Officer is required to determine the age of a young person, the Arresting Officer will seek to establish age by:-

- asking the young person his/her age and/or to provide information that could determine his or her age;
- asking parents;
- consulting church records;
- checking school records;
- checking clinical records;
- contacting the civil registry for birth registration; and
- other appropriate avenues.



Principle 5

The Police Juvenile Prosecutor (PJP) will monitor that juveniles are being sent to the right court.

Section 4 - Interests of the juvenile paramount

What the JCA says

In the proceedings and actions under this Act, the interests of a juvenile will be the paramount consideration.



To give effect to this part of the Act, the RPNGC will adopt a series of **Principles & Guidelines** based on the following national and international standards and conventions:-

- *The Papua New Guinea National Law and Justice Policy and Plan of Action: Towards Restorative Justice* (2000);
- *The United Nations Convention on the Rights of the Child* (1989);
- *The United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (1985);
- *The United Nations Standard Rules for Non-custodial Measures* (The Tokyo Rules; 1990);
- *The United Nations Guidelines for the Prevention of Juvenile Delinquency* (The Riyadh Guidelines; 1990)

The United Nations *Convention on the Rights of the Child (CRC)*

The CRC is the most widely adopted human rights agreement in the history of humankind. PNG became a signatory to the CRC in 1993.

The CRC is comprised of **54 articles or rules**. A **summary of the nine rules** that relate directly to the administration of juvenile justice are listed here below.



Rule 1 **(Article 37(a))**

No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Rule 2 **(Article 37(b))**

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.



Rule 3 **(Article 37(c))**

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family.

Rule 4 **(Article 37(d))**

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court.



Rule 5 **(Article 40)**

All countries shall recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth.

Rule 6 **(Article 40(2)(a))**

No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.

Rule 7

(Article 40(2)(b))

Every child alleged as or accused of having infringed the law has at least the following guarantees:-

- To be presumed innocent until proven guilty according to law.
- To be informed promptly and directly of the charges against him or her.
- To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law.
- Not to be compelled to give testimony or to confess guilt.
- If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a court of law.
- To have the free assistance of an interpreter if the child cannot understand or speak the language used.
- To have his or her privacy fully respected at all stages of the proceedings.

Rule 8

(Article 40(3))

All countries shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:-

- the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

Rule 9

(Article 40(4))

A variety of options, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

4 GOLDEN RULES FOR DIVERSION

DIVERT YOUNG PEOPLE RATHER THAN ARREST



In keeping with *The Law and Justice Sector Policy and Plan of Action (2000)*, a young offender of trivial, minor and less serious offences will be **diverted** away from the formal justice sector, applying the principles of restorative justice.

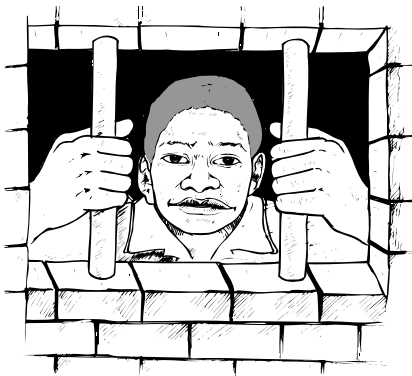
DO NOT USE FORCE



Physical force **will not** be used on a young person, except when the danger of risk of harm or escape is unacceptably high. Such force can only be used:-

- to prevent escape, where there is strong evidence that the young person may try to escape;
- to protect the young person from his or her own actions or from the actions of others; or
- to protect others from the actions of the young person.

DO NOT DETAIN



A young person **will not** be detained in a police cell - **at any station**, other than the designated cell, except when the danger of risk of harm or escape is unacceptably high.

A young person may **only** be detained in a police cell:-

- to prevent escape, where there is strong evidence that the young person may try to escape;
- to protect the young person from his or her own actions or from the actions of others; or
- to protect others from the actions of the young person.

REMAND IS A LAST RESORT

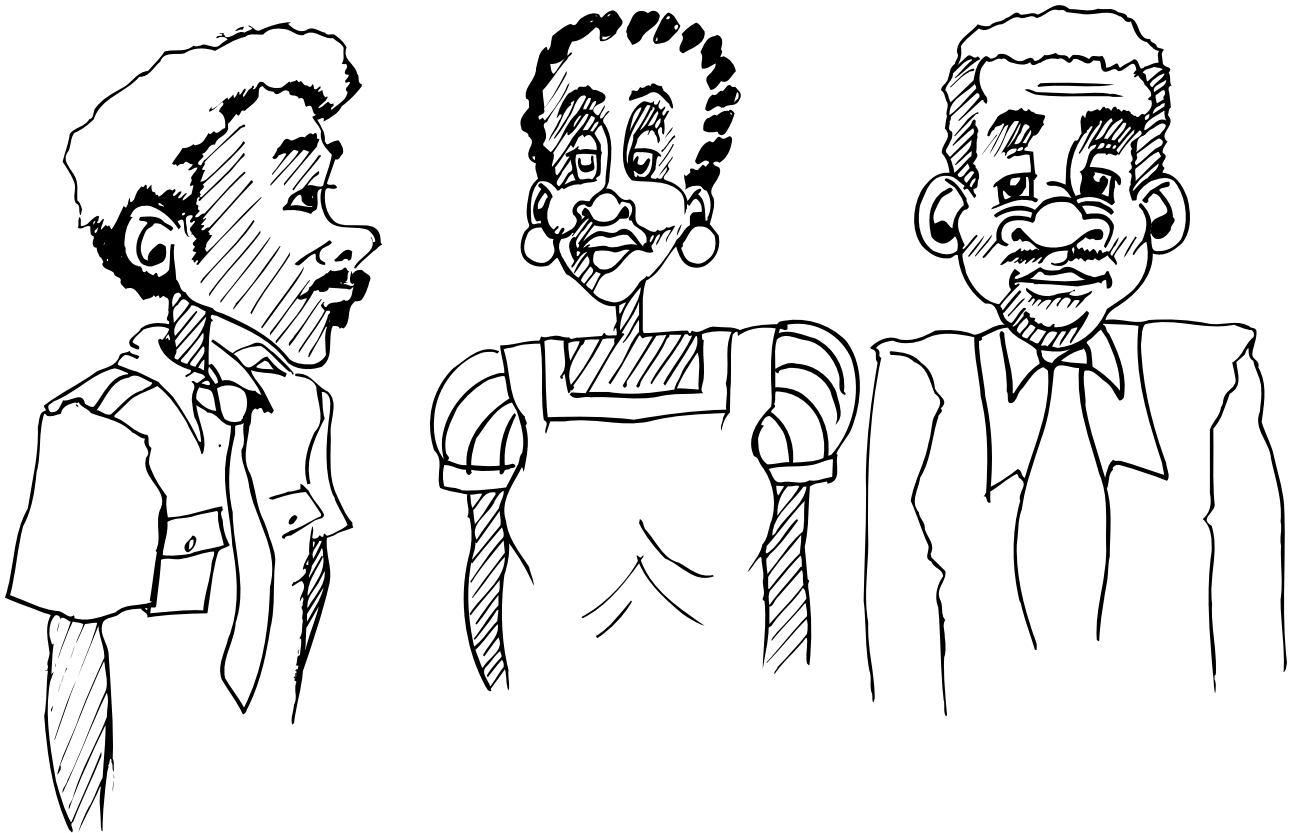


Remand pending trial will be used only as a **measure of last resort** and for the shortest possible period of time.

Under 14s will never be detained in a police cell or other institution, except for the most serious of crimes. A young person will, where possible, be released into the care of their families or other responsible adults (such as Juvenile Court Officers) to await trial in their own communities.

PART III - Juvenile Courts Service

Section 9 - Members of the service



What the JCA says

Juvenile Court Officers will be employees of the Public Service and will be officers of the Court.

The Director of the Juvenile Courts Service has advised the Commissioner of Police that there are insufficient numbers of paid officers within Community Based Corrections to undertake this function. The Director Juvenile Courts Service has recruited volunteers to perform part or all of the functions of a Juvenile Court Officer (s12).

These volunteers have the powers of a Juvenile Court Officer as prescribed by the Act (s13). In NCD, Port Moresby City Mission, Sacred Hearts Brothers and Salvation Army have been trained as Juvenile Court Officers.

Guideline 1:

The PSC will ensure that his or her officers treat Juvenile Court Officers (JCOs) with respect and professionalism. Where a Juvenile Court Officer (JCO) reports that he or she has not been treated with respect or professionalism, the PSC will take immediate action and rectify the situation.

Section 13- Powers of juvenile court officers

What the JCA says



Juvenile Court Officers have the power to ensure that the rights of a juvenile are protected.

A Juvenile Court Officer (JCO) may:-

- enter any Police Station, lock-up or any other place of detention, for the purpose of interviewing a juvenile or a ward;
- be present at the interrogation of a juvenile or a ward; and
- advise a juvenile or a ward of their legal rights and the right to refuse to answer questions; and
- question an Arresting Officer in respect of a juvenile or a ward who is arrested or who is charged with, or in connection with, an offence; and
- attend in any Court and be heard in connection with any charge against a juvenile or a ward to whom they are assigned; and
- make submissions in respect of a sentence to be imposed on a juvenile or ward; and
- counsel or advise a juvenile or a ward.

Guideline 1

The PSC is responsible for ensuring compliance with this section of the JCA.

Guideline 2

A Juvenile Court Officer may only question an Arresting Officer in the presence of the shift OIC.

Guideline 3

During the interrogation of the juvenile by the Arresting Officer, the Juvenile Court Officer (JCO) may not question the Arresting Officer or question the juvenile, or advise the juvenile, unless the Arresting Officer, gives the Juvenile Court Officer (JCO) approval to do so.

Guideline 4

The Arresting Officer or any other officer may not interview or interrogate a juvenile without the presence of a Juvenile Court Officer (JCO).

Guideline 5

The Shift OIC will allow the Juvenile Court Officer (JCO) access to the juvenile, before the interview commences.

PART IV - Jurisdiction

Section 15 - General jurisdiction



What the JCA says

A Juvenile Court has jurisdiction to hear and determine summarily all offences otherwise triable in a District or Local Court.

A Juvenile Court has jurisdiction to hear and determine all indictable offences, other than homicide, rape or an offence punishable by death or imprisonment for life.

Where a juvenile is charged with homicide, rape or other offence punishable by death or imprisonment for life, the committal proceedings shall be dealt with by a Juvenile Court. The trial shall be heard and determined by the National Court.

Guideline 1

The Director, Police Prosecutions, will ensure that all Police Juvenile Prosecutors (PJPs) are trained in handling committal proceedings.

Guideline 2

Juvenile committal proceedings are a priority for processing. The Shift OIC will ensure that a committal case is finalised within four weeks.

Section 17 - Exercise of jurisdiction by courts of summary jurisdiction



What the JCA says

A Court of Summary Jurisdiction can sit as a Juvenile Court where no Juvenile Court has been established in an area or it is impracticable for a juvenile to be brought before a Juvenile Court.

Juvenile Courts have been established in Port Moresby, Lae, Rabaul, Wewak, Mt Hagen, Kundiawa and Goroka.

Guideline 1

In areas where there is no Juvenile Court or Office of Community Based Corrections, the Police Station Commander (PSC) will invite community leaders to act as Volunteer Juvenile Court Officers (VJCOs).

The Director, Juvenile Courts, will develop a self-paced learning kit for use by such volunteers.

Guideline 2

The Police Station Commander (PSC) will provide the names of the volunteers who successfully complete the self-paced learning kit to the Director, Juvenile Courts. The Director, Juvenile Courts, will gazette these volunteers as Juvenile Court Officers for a designated area.

PART V - Procedures for arrest and detention of juveniles

Section 19 - Interpretation of this part



What the JCA says

Shift Officer-in-Charge (**Shift OIC**) or Shift Supervisor means the Police Officer in charge of the Police Station at the time the juvenile is brought into the Police Station.

Police Juvenile Officers (PJOs)

To assist the PSC meet the requirements of the Act, the Shift OICs will be trained as a **Police Juvenile Officer (PJO)**.

These officers will have the added responsibility of supervising all juvenile matters. The key function of a PJO is to delegate for the PSC on matters relating to juveniles as contained in the *Principle & Guidelines*.

SELECTION OF POLICE JUVENILE OFFICER

These officers will be selected and appointed by the

Police Station Commander, based on four criteria.

The Police Juvenile Officer:-

- i. has sufficient authority to be able to carry out the duties of the position;
- ii. is committed to the effective implementation of the *Principles & Guidelines*;
- iii. has sufficient rank and/or the personal qualities needed, to ensure that all officers comply in full with the *Principles & Guidelines*; and
- iv. has sufficient rank and/or the personal qualities needed, to counsel an officer who is in breach of the *Principles & Guidelines*.

DUTIES OF POLICE JUVENILE OFFICER

The **key duties** of the Police Juvenile Officer are to:-

- delegate for the PSC on matters relating to juveniles;
- be responsible for deciding all judicial cases either to divert or not to divert to the normal justice system;
- monitor the implementation of the *Principles & Guidelines* and to report any deficiencies or areas that can be improved;
- take responsibility for the overall supervision of juvenile matters;
- ensure that all officers comply in full with the *Principles & Guidelines*;
- train/educate/inform colleagues of their responsibilities under the JCA and counsel those officers in breach of the JCA; and
- ensure that appropriate records are kept.

Supervision and training of a Police Juvenile Officer

The PSC will have responsibility for supervising, disciplining and, where necessary, replacing a Police Juvenile Officer, with a more suitable officer.

Program management & support

The Director Community Policing at National PHQ will have overall responsibility for managing the Police Juvenile Officer Program.

Management of the Program will include four elements:-

- i. Monitor the effectiveness or otherwise of the program.
- ii. Develop strategies to sustain the program over the long-term period.
- iii. Facilitate opportunities for PJOs, JCOs and Juvenile Prosecutors to receive training and to come together as a group to discuss issues of concern and to share experiences.
- iv. Report to senior management on the effectiveness or otherwise of the program.

Training of Police Juvenile Officers

Bomana Training and Development Branch will have responsibility for training police in their responsibilities under the *Principles & Guidelines*.

Police Juvenile Prosecutors

Police Juvenile Prosecutors (PJP), CID and all other section heads will also be trained in these *Principles & Guidelines*.

Section 20 - Detention of an infant



What the JCA says

Children up to the age of seven years cannot be detained by the police or charged with a criminal offence.

Guideline 1

Children under the age of seven cannot be detained in a police cell, under any circumstance.

Guideline 2

The Shift OIC is responsible for ensuring that homeless, abused, and neglected children are brought to the attention of the Senior Welfare Officer for the province. This includes children up to the age of 18 years.

Guideline 3

Where a child under the age of seven has been involved in anti-social behaviour or criminal activity, the Shift OIC will advise the child's parents and request that they counsel the child accordingly.

Guideline 4

If the Shift OIC is of the view that the parents will not or cannot counsel the child, the Shift OIC will report the matter to the Senior Welfare Officer and formally request their intervention. The OIC will advise the child's family that this course of action has been taken.

Guideline 5

Where a child does not have a home or family to care for them, the Shift OIC will notify a Juvenile Court Officer (JCO) and request that they provide emergency accommodation to the child. This also applies to children up to the age of 18.

Section 21 - Arrest of a juvenile



What the JCA says

Where a juvenile is arrested, the Shift OIC will:-

- immediately notify a parent or responsible person, and a Juvenile Court Officer, and allow access to them to the juvenile;
- place the juvenile in a remand centre or in such other place as is approved by the Director Juvenile Courts; and
- notify a Juvenile Court Officer (JCO) of the arrest, the reasons for the arrest and the place of detention.

Guideline 1

Before proceeding to formally arrest and charge a juvenile, the Arresting Officer will first consider the range of diversion options contained in Section Two of these *Principles & Guidelines*, and discuss the case with the Police Juvenile Officer, who is the Shift OIC.

Guideline 2

A juvenile will not be formally arrested and charged, without the approval of the Shift OIC.

Guideline 3

Before granting approval for a juvenile to be formally arrested and charged, the Shift OIC will first consider the alternatives contained in the Diversion Program.

Guideline 4

Once a decision is made to formally arrest and charge a juvenile, the Arresting Officer will ensure that the arrest process strictly complies with these *Principles & Guidelines*.

Guideline 5

The Shift OIC has full responsibility for ensuring that the arrest process strictly complies with these *Principles & Guidelines*.

Guideline 6

Where it is not possible to notify a parent or guardian, it is sufficient to notify a Juvenile Court Officer (JCO) only.

Guideline 7

The procedures for arrest will also follow the Procedures described in Section 2.6 of the Police Manual on Juveniles. Where these Procedures and the *Principles & Guidelines* are in conflict, the *Principles & Guidelines* will be followed.

Guideline 8

Where the Shift OIC determines that a juvenile will be formally arrested and charged, the process will commence at Boroko (for NCD).

Guideline 9

The Shift OIC will ensure the **immediate** transport of the juvenile to Boroko Police Station (for NCD).

Guideline 10

Remand pending trial will be used only as a **measure of last resort** and for the shortest possible period of time.

Under 14s will never be detained in a police cell or other institution, except for the most serious of crimes.

Juveniles will, where possible, be released into the care of their families or other responsible adults (such as Juvenile Court Officers) to await trial in their own communities.

Guideline 11

A juvenile will not be detained in a police cell **at any station**, other than the designated cell, except when the danger of risk of harm or escape is unacceptably high.

A juvenile may only be detained in a police cell:-

- to prevent escape, where there is strong evidence that the juvenile may try to escape;
- to protect the young person from his or her own actions or from the actions of others; or
- to protect others from the actions of the young person.

Guideline 12

Where a juvenile has been detained in a police cell, **including the designated juvenile cell**, the Shift OIC will provide a report to the Police Juvenile Prosecutor (PJP) describing the reasons for this action.

The Police Juvenile Prosecutor will provide this form to the Magistrate hearing the case.

The Magistrate will make a determination to either endorse or reject the reasons provided by the Shift OIC.

Where a determination is made rejecting the reasons provided by the Shift OIC, the Magistrate will refer the matter to the Police Station Commander (PSC) for his or her consideration and action.

Section 22 - Civil remedy for wrongful detention or arrest



What the JCA says

A Police Officer or civilian who detains an infant or charges a juvenile and who fails or refuses to perform a duty imposed by the Act, may be liable in damages to the person aggrieved by the breach, failure, or refusal.

Guideline 1

The PSC will ensure that all officers under his or her command are made fully aware of these *Principles & Guidelines*.

Guideline 2

The PSC will provide a copy of the *Principles & Guidelines* to each Police Officer.

Part VI - Practice and Procedures

Section 28 - Restriction of publication of proceedings

What the JCA says

NAME: Ros Mungi
AGE: 12 SEX: Male
HEIGHT: 101cm
ADDRESS: GANEX
VILLAGE, BANANA PLT
PHYSICAL CHARACTERISTICS
HAIR COLOUR: Dark tan
EYE COLOUR: Brown
Tattoo on the left arm

COURT CASE #1510

[Handwritten signature and notes]

It is against the law to publish a report of the proceedings of a case, except in two circumstances:-

1. The Court expressly authorises its publication; or
2. Where the publication is of a technical nature intended for circulation amongst the members of the legal, medical, teaching, psychological, or social welfare professions, and authorisation is given by the Director, Juvenile Courts Service.

It is prohibited to publish any particulars that are likely to lead to identification of a juvenile. An individual can be fined up to K500 and a corporation can be fined up to K10, 000.

The Director Juvenile Courts Service has prime responsibility for ensuring compliance with this section of the Act.

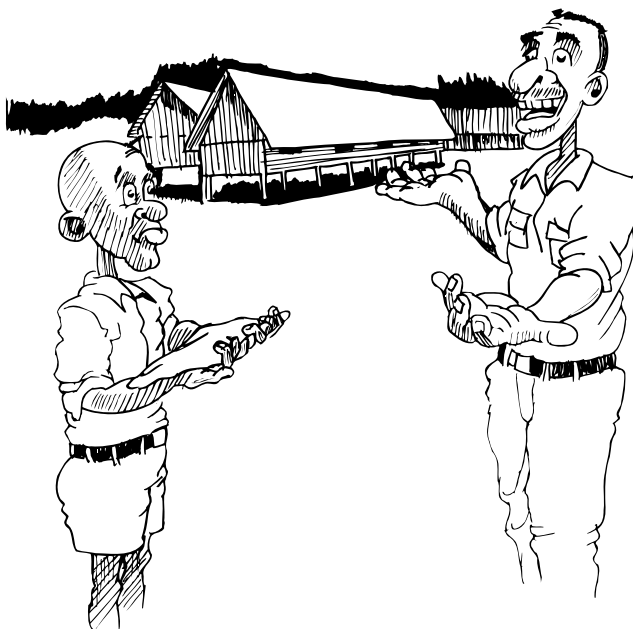
Guideline 1

The Juvenile Police Prosecutor (PJP) will notify the Director, Juvenile Courts Service, of any breach of this Section of the Act.

The Director, Juvenile Court Service, will lodge a complaint with the District Court.

Part XI - Institutions

Section 47 - 55 - Approval of institutions



What the JCA says

Where a juvenile is remanded in custody while awaiting to appear in a Court - **for any reason**, the juvenile may only be remanded in a remand centre approved for that purpose.

Guideline 1

In NCD, a juvenile placed on remand will be held at either Badili Remand Centre or Hohola Remand Centre.

Guideline 2

A juvenile may be detained in the juvenile cell at Boroko Police Station, rather than a remand centre, when:-

- the danger of risk of harm or escape is unacceptably high; and/or
- the Superintendent of the Remand Centre refuses to accept the juvenile.

Guideline 3

Where a juvenile has been detained in the juvenile cell at Boroko, the Shift OIC will provide a report to the Police Juvenile Prosecutor (PJP) describing the reasons for this action. (A 'Form' will be developed)

Guideline 4

The Police Juvenile Prosecutor (PJP) will provide this form to the Magistrate hearing the matter.

The Magistrate will make a determination either endorsing or rejecting the reasons provided by the Shift OIC.

Guideline 5

Where a determination is made rejecting the reasons provided by the Shift OIC, the Magistrate will refer the matter to the Police Station Commander (PSC) for his or her consideration and action.

Part XX – Records

Section 56 - Restriction on finger-printing and photographing



What the JCA says

Notwithstanding any law relating to the identification of persons suspected, charged, or convicted of offences, where a juvenile is suspected of having committed; or charged with; or convicted of, an offence, other than an indictable offence, the juvenile will not be fingerprinted or photographed.

Where proceedings for an indictable offence are dismissed, any fingerprints or photographs of the juvenile will be surrendered to the Court and destroyed.

Guideline 1

Only a juvenile charged with an indictable offence may be fingerprinted and photographed.

Guideline 2

Where a juvenile has been charged with an indictable offence and has been fingerprinted or photographed, the Police Juvenile Prosecutor will provide a copy of these records to the Magistrate or Judge hearing the case. These records will be handed to the Court when the case first appears for mention.

Where proceedings against a juvenile are dismissed, the Court will destroy these records. Where the proceedings are proven, the Court will return the records to the Police Juvenile Prosecutor (PJP).

Police Records: What the JCA says

The Act is silent on the matter of police records, other than on placing restrictions on the fingerprinting and photographing of a juvenile.

Juvenile Occurrence Book.

A **Juvenile Occurrence Book** will be placed in every Juvenile Reception Centre and be used in the same way as the main Occurrence Book. It will record all matters relating to juveniles.

Guideline 1

All occurrences relating to a juvenile will be recorded in the Juvenile Occurrence Book as well as the main O/B.

Guideline 2

The Shift OIC is responsible for ensuring that the Occurrence Book is maintained and used correctly.

Guideline 3

The Shift OIC will ensure that a weekly summary of the Occurrence Book is provided to the Police Juvenile Prosecutor every Monday.

Guideline 4

The Police Juvenile Prosecutor will maintain a register of the forms received and prepare a monthly report for the Director Community Policing (NPHQ) and the Director of the Juvenile Courts Service.

A copy of the report will be provided to OIC Prosecution and Police Station Commander (PSC).

Chapter 2

Diversion Program

Option 1: Warning

Name not recorded



- Purpose**
- This type of *warning* is issued for trivial and minor offences and where there is no 'obvious' victim.
- Procedures**
- The warning is given on the spot;
 - The young person is not taken to the police station.
 - The young person is advised/counselled to change his/her behaviour.
- Records**
- The name of the young person is not recorded in the Police Officer's Note Book.
 - The issuing of the warning is recorded in the Occurrence Book.
 - In the Occurrence Book, write the date, and time the warning was issued, and the reason why the warning was issued. The young person's name is not recorded in the Occurrence Book.

Practice Tip 1

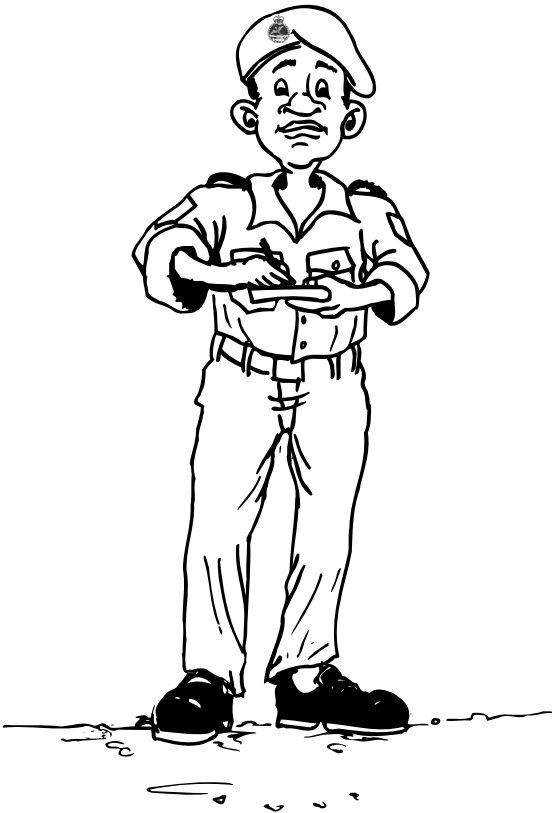
Young people do not respond positively to threats and intimidation by Police. Let the young person know that you are giving them a second chance. Use the opportunity to try and build a more positive relationship with young person.

Guideline 1

A warning will only be issued when a young person has broken the law or is about to break the law. A warning will not be issued as a means of resolving anti-social behaviour or other behaviour that may be 'irritating' rather than criminal.

Option 2: Warning

Name recorded in Note Book



- Purpose**
- This type of warning is issued for trivial and minor offences, where there is a victim.
- Procedures**
- The warning is given on the spot.
 - If appropriate, ask the young person to apologise to the victim for his/her behaviour.
 - The young person is not brought to the police station.
 - The young person is advised/counselled to change his/her behaviour.
 - The young person is warned that if he/she persists in breaking the law, he/she may be charged next time.
- Records**
- The name of the young person and his or her address is recorded in the Police Officer's Note Book.
 - The issuing of the warning is recorded in the Occurrence Book.
- In the Occurrence Book, write the date, and time the warning was issued, the reason why the warning was issued, and the young person's name and address.

Practice Tip 2

In Melanesian culture, the purpose of an apology is to allow for forgiveness and reconciliation. An apology will have no meaning if it is forced and given under threat or intimidation. For an apology to have meaning for the young person and the victim, the young person must acknowledge that his or her behaviour was wrong.

Guideline 2

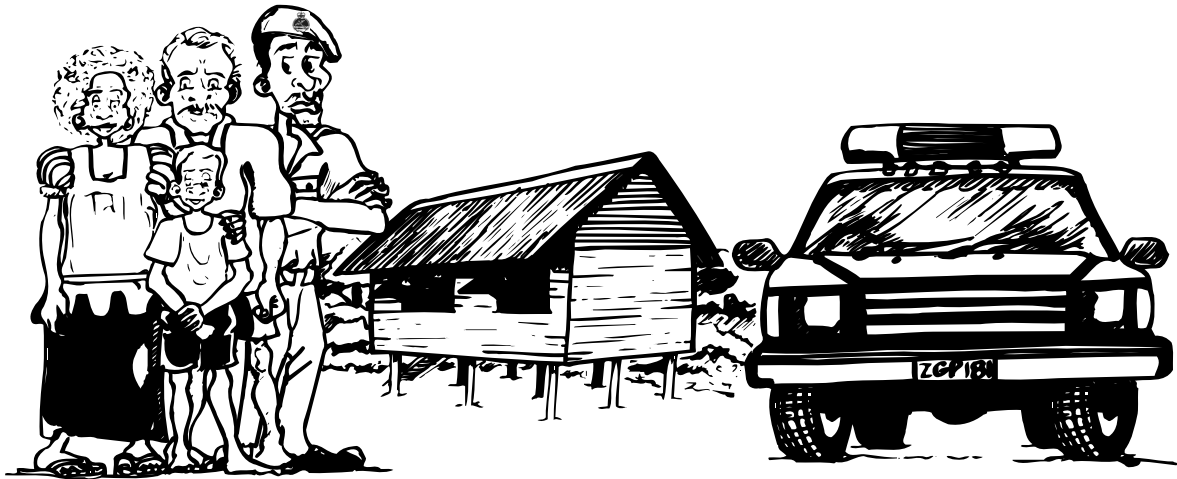
The Shift OIC will ensure that all warnings are recorded in the Juvenile Occurrence Book.

Guideline 3

Warnings will be issued for trivial and minor offences, where violence is not involved.

Option 3: Counselling

Young person is brought to police station or taken home to their parents



Purpose

- Counselling is provided for less serious offences, where there may or may not be a victim. The young person has clearly broken the law and the Arresting Officer is fully within his or her rights to formally arrest and charge the young person. By providing Counselling rather than arrest you are giving the young person 'a second chance.'

Procedure

- The young person is not arrested.
- The young person is advised that his or her behaviour is sufficiently serious to warrant arrest.
- The young person is advised that he or she has the choice of coming with the Arresting Officer voluntarily or being arrested. The young person is taken to the police station or taken home to his or her parents.
- The young person's parents should be informed of the young person's behaviour and the consequences if the young person does not address his or her behaviour.
- If there is a victim, the young person should apologise to the victim for their behaviour.

Records

- The name of the young person and his or her address is recorded in the police officer's Note Book.
- The young person is advised/counselled to change his behaviour.
- The provision of counselling is recorded in the Juvenile Occurrence Book.
- In the Juvenile Occurrence Book, write the date, and time of the counselling, the reasons for the counselling, and the young person's name and address.

Practice Tip 3

Counselling by Police should always be positive and never negative. The purpose of Counselling is to allow for the young person to acknowledge and 'own' the fact that he or she has done something illegal. Counselling that involves threats, intimidation, or illegal detention in a Police cell, is counter-productive and in a breach of these Principles & Guidelines.

Use the opportunity to get the young person to talk with you about why he or she has broken the law and the factors that led him or her to act in this way.

Option 4: Mediation



Purpose

- Mediation is used when the victim, or young person's parents want the police to deal with the matter seriously. Mediation is provided for less serious offences, where there may or may not be a victim. The young person has clearly broken the law and the Arresting Officer is fully within their rights to formally arrest and charge the young person.

Procedures

- Victim agrees to deal with the matter through mediation.
- The young person is not arrested.
- The young person is advised that his or her behaviour is sufficiently grave to warrant arrest.
- The young person is advised that mediation will be tried rather than formal arrest.
- The young person is advised that he or she has the choice of coming with the Arresting Officer voluntarily or being arrested.
- The young person is taken to the police station.
- The young person's parents are brought to the police station.
- The victim is invited to participate in the mediation.

The Mediation

- The mediation is conducted by the JCO and the Duty Member.
- Before the mediation can proceed, the young person must admit guilt and be willing to apologise to the victim.
- Mediation can still proceed if there is no victim or if the victim is not willing to participate in the mediation.
- The mediation will follow the principles of restorative justice.

Records

- The mediation will be recorded in the Mediation Action Plan.
- The mediation is recorded in the Occurrence Book.

In the Occurrence Book, write the date, and time of the mediation, the reason why the mediation was held, the young person's name and address, and the action agreed.

Practice Tip 4

A good mediation achieves its goal by delivering restorative justice. Restorative justice holds the offender directly accountable to the individual victim and the particular community affected by the offence.

Mediation requires the offender to take responsibility to make things whole again to the degree that it is possible. It provides the victim purposeful access to the justice system and correctional processes.

Mediation allows the victims to assist in shaping offender obligations, and encourages the community to become directly involved in supporting victims, holding offenders accountable, and providing opportunities for offenders to reintegrate into the community.

Guideline 6

Physical force will not be used on a young person, except when the danger of risk of harm or escape is unacceptably high. Such force can only be used to prevent escape, to protect the young person from his or her own actions or from the actions of others, or to protect others from the actions of the young person.

Option 5: Community work



Community work can only be used as part of mediation. Often parents and communities want a young person 'punished'. Detaining a young person in a cell was one way of meeting these demands in the past.

- Purpose**
- Provide a practical alternative to detaining a juvenile in a cell.
 - Provide the young person with an opportunity to make amends for his or her actions. Community work is particularly useful when a young person or his/her family cannot meet the costs of damages incurred by the young person.
- Process**
- During the mediation, explore options for community work.
 - The maximum of 20 hours is allowed for community work.
 - Community work is to be supervised by a parent or community agency or community leader.

Records • Record the type of community work included in the Mediation Action Plan

Guideline 7

Community Policing Officers will identify a number of community organizations and Community Leaders within the community to volunteer as Community Work Supervisors.

Guideline 8

These volunteers will be accredited by the Police Station Commander. The Police Station Commander will present the volunteers with certificates acknowledging their role in the community.

Option 6: Arrest, charge and bail

Conditional release by police



- Process**
- The young person is formally arrested and charged.
 - The arrest procedures strictly follow these *Principles & Guidelines*.
 - The young person is only remanded in exceptional circumstances.

Option 7: Arrest, charge and bail

Conditional release by juvenile court



Program description

- The Juvenile Court will, wherever possible, release a young person into the care of his or her families or other responsible adult to await trial. The Juvenile Court says it will not use remand for young people other than in exceptional circumstances.
- Under 14s should never be detained in a police cell or other institution, except for the most serious of crimes.
- young people should, wherever possible, be released into the care of their families or other responsible

adults to await trial in their own communities. 'Conditional Release' should be accompanied by measures to support and supervise the child and support the family.

Guideline 9

Pre-trial detention will not be used for young people other than in exceptional circumstances. The Police Juvenile Prosecutors (PJPs) will support the release of a young person.

Option 8: Juvenile court restorative justice program



The Magisterial Service has established a *Juvenile Court Restorative Justice Program*. The purpose of the Program is to divert, where appropriate, young offenders away from the formal justice system and back to their communities for mediation.

Program description

- Mediations will be performed by Community Panels. The Panels will include the Mediator(s), the young person who has committed the offence, members of his or her family, the victim, a support person for the victim, community leaders and representatives from police and welfare.

The goal of the mediation is to write a plan about how best to deal with the offending. Its purpose is to restore the young offender back to their community and to make things as right as possible for the victim.

Guideline 10

Police Juvenile Prosecutors (PJPs) will support the Juvenile Court Mediation Program.

Guideline 11

Where a young person is referred to the Mediation Program, the Arresting Officer will participate in the Mediation Panel. The Arresting Officer will follow the directions of the Juvenile Court Magistrate.

The role of the Arresting Officer in mediation is to read the charges against the young person. The Arresting Officer will not wear his/her uniform or cross-examine the young person during mediation.

Guideline 12

The participation of Police Officers on Mediation Panels will be supported by the PSC.

Guideline 13

Where it is not possible for the arresting officer to participate in the mediation, the Shift OIC may choose to send another officer to the mediation. The Shift OIC will support the mediation program in practical ways where time and resources allow.

Examples of this support could include:-

- The provision of transport to and from the mediation, for some or all of the Mediation Panel, including the young person and his or her family.
- Assisting the Mediator to contact the young person and his or her family, in the lead up to the mediation.
- Allowing the Mediator to use the Police Station phone to make phone calls directly related to the mediation.
- Assisting with locating a suitable venue to hold the mediation.

Practice Tip 5

Juvenile crime is often most evident in particular 'hot spots'. It makes good policing sense to involve respected leaders from these 'hot spots' in the Juvenile Restorative Justice Program, either as mediators or as community leaders.

Police Station Commanders (PSCs) should have their Community Police Officers identify potential Mediators and ask them to volunteer for the Program. The JCOs are also to do the same.

Community leaders can become Mediators by visiting the Juvenile Court in town and seeing the Clerk of the Court or the JCO (i.e. those in Port Moresby, and similar steps to take by those in other centres as well).

Chapter 3

Resources

International Principles for all justice sector agencies, including the RPNGC

The following **Principles** are drawn from the International Conventions & Rules referred to at the beginning of the Section. The term, 'Justice Sector Agencies', includes all government departments, religious and community organisations that have an interest in the welfare of juveniles who come into conflict with law.



Principle 1

The juvenile justice system will ensure for the juvenile, a meaningful life in the community, which, during that period in life when she/he is most vulnerable to anti-social behaviour and crime, will foster a process of personal development and education that is as free from crime and delinquency as possible.



Principle 2

The justice system will involve the full mobilisation of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well being of the juvenile.



Principle 3

The juvenile justice system will aim at promoting juvenile welfare to the greatest possible extent, which will minimise the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention.



Principle 4

The juvenile justice system will emphasise the well-being of the juvenile and will ensure that any reaction to juvenile offenders will always be in proportion to the circumstances of both the offenders and the offence.



Principle 5

The juvenile justice system will ensure that the response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example, by having regard to the offender's endeavour to indemnify the victim or to her/his willingness to turn to wholesome and useful life).



Principle 6

The juvenile justice system will ensure that basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses, and the right to appeal to a higher authority, will be guaranteed at all stages of proceedings.



Principle 7

The juvenile justice system will ensure that the juvenile's right to privacy is respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. No information that may lead to the identification of a juvenile offender will be published.



Principle 8

The juvenile justice system will ensure that contacts between the law enforcement agencies and a juvenile offender will be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile, and avoid harm to her or him, with due regard to the circumstances of the case.

Description of the juvenile justice reform process and the *Juvenile Courts Act*

The **juvenile justice reform process** is designed to:-

- implement the JCA and the International Conventions and other Protocols on the child rights; and
- reduce the number of juveniles deprived of their liberty.

The major components of the **reform process** are:-

- gazettal of the *Juvenile Courts Act (1991) (JCA)*;
- establishment of Juvenile Courts in the seven major urban centres of Port Moresby, Lae, Rabaul, Mt Hagen, Kundiawa, Goroka and Wewak. The first Juvenile Court in PNG opened in Port Moresby on 26 May 2003;
- implementation of a police managed diversion program, both pre-arrest and post arrest, (alternatives to remand) in the seven urban centres;
- implementation of a court managed Juvenile Mediation Program, pre-sentence and post sentence (alternatives to custodial sentences) in the seven urban centres;
- capacity building of government and community stakeholders; and
- an assessment of the situation of children in conflict with the law in Bougainville.

The expected major outcomes include:-

- removing any contact between juveniles and the adult offenders;
- preventing or reducing duration of detentions;
- speeding up processing of all juvenile cases undergoing the formal system;
- reducing or minimising emotions and trauma on juveniles; and
- rehabilitating juveniles as speedily as possible throughout the whole process.

Key provisions of the JCA provide for the following:-

- Defines a juvenile as being a person between the ages of 7 and 18 (previously a juvenile was defined as being up to the age of 16).
- Establishes Juvenile Courts with the jurisdiction to hear and determine summarily all offences otherwise triable in a District Court or Local Court.
- Juvenile Courts handle all cases where a juvenile is charged with an indictable offence other than homicide, rape or offence punishable by death or imprisonment for life. Where a juvenile is charged with homicide, rape or other offence punishable by death or imprisonment for life, the committal proceedings shall be dealt with by a Juvenile Court.
- Where a juvenile is charged with homicide, rape or other offence punishable by death or imprisonment for life, the trial shall be heard and determined by the National Court.
- The National Court may exercise the sentencing powers conferred by this Act in a Juvenile Court.
- Provides for Courts of Summary Jurisdiction to sit as Juvenile Courts in areas where there are no Juvenile Courts.
- Requires the appointment of Juvenile Court Officers to advocate for juveniles at the point of arrest (at police stations) and at Court and be present during the police interview.
- Restrictions on where the police can detain a juvenile.
- Requirement that all custodial sentences be reviewed after six months.
- Requirement that 'the interests of the juvenile shall be the paramount consideration' in the proceedings and actions under the JCA.

Definitions and Terms

Diversion

Diversion is the channelling of juveniles away from the formal justice system. For those juveniles already caught up in the justice system, diversion seeks to stop further progression into the system.

Diversion can be applied at any point before and after the arrest, such as:-

- Pre-arrest – The juvenile is diverted (given a warning or is counselled) instead of being arrested.
- Arrest – The juvenile is arrested, but not formally charged. Diversion is tried and if it works, the police do not formally charge the juvenile.
- Arrest and Charge – The juvenile is arrested and charged and bailed. The juvenile does not spend time in a police lock up or a remand centre.
- Pre-Hearing – The Magistrate does not hear the case, but instead refers the juvenile to mediation. If the mediation is successful, the case is withdrawn and no conviction is recorded against the juvenile.
- Pre-Sentence – The Magistrate hears the case, but before handing down the sentence refers the juvenile to mediation. The purpose of the mediation is to make a recommendation back to the Magistrate as to whether it is possible for the juvenile to be managed in the community rather than in a juvenile institution.

Why divert?

- Diversion meets the society's responsibility to ensure children/juveniles are given every help and opportunity to grow up into well-balanced productive adults.
- It recognises the special needs of juveniles who are growing from a child to an adult and are not fully aware of what is right and wrong - especially the criminal laws.
- It recognises that children and juveniles are very easily traumatised for life by bad experiences, which can make them grow up bitter and angry at 'authority'.
- It gives first-time and minor offenders a second chance.
- It reduces the number of juveniles coming into contact with adult offenders and learning new 'tricks' from them or being abused by them.
- It reduces the number of offenders/remandees entering the Correctional Institutions, which should result in less chance of mass-escapes and costs to the State.

Juvenile crime prevention

The Diversion Program increases the opportunity for police to prevent juveniles from committing more serious crimes or re-committing. In making use of warnings, counselling and mediation, the offending or misled juveniles can be corrected outside the 'Formal Justice System', which starts with a police arrest.

Diversion is not a 'soft option'

Diversion is not an easy way out of making an arrest or being soft on the juvenile offender. When used properly in the right circumstance and reasons, it is the best option for:-

- the juvenile who gets a second chance, it is less traumatised and not abused;
- the justice system which will have less people to deal with undergoing the processes from the Courts to the Correctional Institutions; and
- the society when the youth grows up into a well-balanced adult.

Trivial matters

Matters that are not an offence but are considered anti-social behaviour like breaking bottles on streets or placing obstacles on roads for fun are trivial matters, but are signs of disrespect for others and need to be corrected. In such cases, verbal warnings on the spot or counselling with parents should be used.

Minor offences

For cases where there is *prima facie* evidence for a minor offence, diversion should be the first consideration, using the approved process.

Less serious offences

Diversion is **not** an option for an indictable crime.

In all Summary Offences, Motor Traffic offences, and other lesser acts, diversion should continue to be an option.

Should an arrest be considered necessary, the approved process must be used to ensure the juvenile is not unduly locked up in a police cell and appears in a court in the shortest possible time.

Policy context

PNG Law & Justice Sector Policy and National Plan of Action: Towards Restorative Justice

This *Policy and Plan of Action* commits the Government and its agencies and departments including the RPNGC, to the principle of restorative justice and the diversion of trivial, minor and less serious offences away from the formal justice system.

To give effect to the *Policy and Plan of Action*, the following Principles have been developed:-

Principle 1

In its dealings with juveniles, the constabulary will, wherever possible, apply the concept of restorative justice. Restorative justice seeks to balance the needs of the **three principal clients** of the justice system – **the Victim, the Offender, and the Community**, not forgetting the State as a stakeholder.

Restorative justice:-

- holds the offender directly accountable to the individual victim and particular community affected by the offence;
- requires the offender to take responsibility to make things whole again to the degree that it is possible;
- provides the victim purposeful access to the justice system and correctional processes, which allows them to assist in shaping offender obligations;
- encourages the community to become directly involved in supporting victims, holding offenders accountable and providing opportunities for offenders to reintegrate into the community; and
- compliments (not replaces) the formal justice system.

Principle 2

The constabulary, including Police Juvenile Officers (PJOs. i.e. Shift OICs) and Police Juvenile Prosecutors (PJPs), are empowered to dispose of trivial, minor and less serious matters, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in these *Principles & Guidelines*.

Principle 3

Consideration will be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial.

Principle 4

Any diversion involving referral to mediation and/or community work will require the consent of the juvenile and her or his parents or guardians.

Program structure

Program goals

The goals of the Police Diversion Program are to:-

1. provide operational police with a range of options besides formal arrest and charge, to deal with juvenile offending;
2. implement a model of restorative justice that draws on the best of Melanesian tradition and contemporary international juvenile justice practice;

Melanesian tradition:

- (a) The Program will seek to bring about reconciliation and forgiveness and restore the community, victim, and the offender.

International juvenile practice:

- (a) The delivery of the Program will be based on the 'best interests of the child' as described in the *Convention of the Rights of the Child* (CRC).
 - (b) The mediation and community work aspects of the program will seek to identify ways to build the skills of the juvenile.
 - (c) The mediation and community work aspects of the Program will involve the juvenile as an equal participant with full speaking rights and the obligation to also listen.
3. implement 'The National Law and Justice Sector Policy and Action Plan: Towards Restorative Justice (2000)', as it relates to juvenile offenders;
 4. reduce the level of re-offending by juveniles;
 5. reduce the number of juveniles arrested;
 6. reduce the number of juveniles on remand;
 7. reduce the number of juveniles in custody.

Program objectives

The ***objectives of the Program*** are to:-

- deal with offences promptly;
- increase the offender's awareness of the way in which his or her action has affected the victim;
- involve the victim in the process and the consequences;
- let the offender and his or her family know that the community as a whole is concerned about this conduct;
- provide for restitution where appropriate;
- involve the community in the solution;
- leave the offender with a feeling of self worth and enhanced skills; and
- allow both offender and victim to reconnect to key community support systems.

Program management

The Shift OIC will ensure that the diversion of a juvenile is **always** considered as an option before proceeding to arrest.

The **Management Services Division** within **PHQ** will have an overall responsibility for managing the **Police Diversion Program** at the development stages.

The management of the Program will include, in the main, **three elements**:-

1. Monitor the effectiveness or otherwise of the Program.
2. Develop strategies to sustain the Program over the long-term period.
3. Report to senior management on the effectiveness or otherwise of the Program.

The **HR Division** and **UNICEF** will develop and implement a training program for Police Juvenile Officers (PJOs).

Chapter 4

Appendices

Appendix: 1

JUVENILE JUSTICE POLICE PROTOCOLS

Listed below each position are some major tasks required under the Juvenile Courts Act and the Police Protocols. The listed tasks are in addition to standard duties but are not exhaustive. The JCA and the Police Protocols should be consulted for the full range of duties and responsibilities.

DUTIES OF THE PROVINCIAL POLICE COMMANDER (PPC)

1. Ensure Police Station Commanders fully implement the Juvenile Police Protocols.
2. Quickly deal with any complaints or requests raised by Juvenile Courts Officers or parents/guardians relating to a specific matter or in general.
3. Report on juvenile cases under a separate heading in monthly briefs to National Police Headquarters.
4. Oversee the Provincial Coordinator Community Policing on Juvenile Protocol duties.

DUTIES OF THE POLICE STATION COMMANDER (PSC)

1. Has overall responsibility for the proper implementation of the 'Protocols' within the command.
2. Oversee the Shift Supervisors, OIC Community Policing and OIC Prosecution in relation to their duties under the 'Protocols'.
3. Deal quickly with complaints or requests of Juvenile Court Officers or parents/guardians relating to a specific matter or in general.
4. Report matters relating to juveniles under a separate heading in the monthly briefs to the PPC. Such information will be supplied by the OIC Prosecutions and Shift Supervisors.
5. Maintain an up-to-date list of Juvenile Court Officers and volunteers and issue Station Instructions to facilitate their work at the station.

Appendix: 2

DUTIES OF THE SHIFT SUPERVISOR

Under the 'Protocol' this position redesignated the Police Juvenile Officer (PJO).

1. Acts on behalf of the PSC to ensure all members comply with and implement this 'Protocol'.
2. Ensure all matters and cases involving juveniles (male/female) are brought to his/her attention.
3. Screen all juvenile offender cases (# 2 above) and decide whether attending member should arrest or divert.
4. Ensure that a Juvenile Court Officer, Welfare Officer or a parent/guardian of the suspect is contacted and is present in ALL cases.
5. Ensure the attending member completes all necessary reports and files and hands them over to the JCO in all diverted cases and follows through to its conclusion.
6. Maintain a Police Gazette file and register of all approved JCOs.
7. Ascertain the identity of the JCO, Welfare Officer or parent/guardian before permitting contact with the juvenile in police custody.
8. Ensure all proceedings take place in the reception room and entries made in the main O/B and the Juvenile O/B.

9. Ensure the privacy and all other rights of both male and females are protected.
10. Immediately report to OIC Prosecutions on juveniles detained in police custody overnight.

Appendix: 3

DUTIES OF OIC PROSECUTION

1. Oversee Shift Supervisors and Juvenile Prosecutors.
2. When a juvenile is detained overnight in police custody, obtain a written explanation from the relevant Shift Supervisor and report to the Court through the Juvenile Prosecutor as soon as practicable and inform the PSC of his/her actions in # 2 (above).
3. Ensure all juvenile cases are directed to the correct courts.
4. Ensure no juvenile is fingerprinted or photographed (except for indictable offences only).
5. Ensure proper resourcing and maintenance of the juvenile reception room.
6. Report on juvenile cases and matters to the PSC in monthly briefs with a copy transmitted immediately to Director Prosecutions at police headquarters.
7. Represent the PSC on the Provincial Juvenile Justice Working Group Committee.

DUTIES OF THE JUVENILE POLICE PROSECUTOR

1. Perform the duties of a Police Prosecutor in the Juvenile Courts.
2. Attend the planning meetings with the Juvenile Court Officers and other stakeholders to the case to determine how best to deal with the case before its initial appearance in court.
3. Contact the Attending (Arresting) Officer as necessary to attend a Mediation Panel Meeting when instructed by the Court.
4. In the absence (unavailability) of the Attending Officer represent police on the Court referred Mediation Panels.

Appendix: 4

DUTIES OF THE DIRECTOR COMMUNITY POLICING

1. Has overall charge and responsibility for Juvenile Justice as it applies to police.
2. Supervise the implementation of the:-
 - i. *Juvenile Justice Police Policy* and
 - ii. Protocols through the Juvenile Protocols Monitoring Unit.
3. Review and update the Policy and Protocols as necessary from time-to-time in liaison with the Director Juvenile Court Services (JCS) and other stakeholders.
4. Advise and keep senior management informed of progress in monthly briefs.
5. Keep PPCs and PSCs informed of issues relating to their areas.
6. Keep the Director JCS informed of the number of cases - arrests and diversions - dealt with by police as required.
7. In liaison with the Director JCS publish names of appointed Juvenile Court Officers (JCO) and other volunteers in the Police Gazettes and distribute to police stations.

DUTIES OF THE OIC JUVENILE PROTOCOL MONITORING UNIT

1. Monitor the implementation of the Policy and Protocols.
2. Coordinate the development and delivery of training on Juvenile Justice and the Protocols.
3. Maintain up-to-date DATA and other information on all juvenile cases - arrests and diversions.
4. Liaise with the Director JCS and maintain an up-to-date record of all appointed JCOs and volunteer JCOs.
5. Ensure the timely supply of relevant materials to the reception rooms.
6. Keep Director Community Policing informed of developments through monthly briefs.

Appendix: 5

DUTIES OF PROVINCIAL COMMUNITY POLICE COORDINATOR

1. Coordinate the implementation of the Police Juvenile Protocols (PJP).
2. Visit station-cells regularly to ensure juveniles are not locked up outside PJP requirements.
3. Maintain the juvenile reception room to ensure safety and security as well as child-friendly environment.
4. Daily check Juvenile O/B to ensure proper entries are kept.
5. Report in monthly brief to Director Community Policing on all juvenile matters - arrests, diversions etc.

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